

# FILE COPY

## TRANSCRIPT OF RECORD

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SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1953

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No. 500

UNITED STATES OF AMERICA, APPELLANT,

vs.

FLOYD DIXON

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APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE  
NORTHERN DISTRICT OF GEORGIA

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FILED DECEMBER 17, 1953

Probable jurisdiction noted January 11, 1954

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1 In United States District Court, Northern District of Georgia,  
Gainesville Division

No. 4716

UNITED STATES OF AMERICA

vs.

FLOYD DIXON

INDICTMENT—Filed September 9, 1953

The Grand Jury charges:

COUNT ONE

That, on or about May 4, 1953, in the Gainesville Division of the Northern Judicial District of Georgia, FLOYD DIXON did unlawfully, wilfully and knowingly have and possess 800 pounds of sugar, two 50-gallon wood doubling barrels, one metal cap, one heater box and mash pipe, the same being property intended for use in the manufacture and production of non-tax-paid distilled spirits, in violation of the Internal Revenue Laws with respect to such distilled spirits, in violation of Sections 3116 and 3115, Title 26, U. S. C.

A True Bill:

(S.) RAYMOND INGLET, *Foreman.*

(S.) JAMES W. DORSEY,  
*United States Attorney.*

(S.) J. ELLIS MUNDY,  
*Assistant United States Attorney.*

[File endorsement omitted.]

2 In United States District Court, Northern District of Georgia

OPINION—Filed October 21st, 1953

The defendant, Floyd Dixon, has moved for a dismissal of the indictment in the above stated case upon the ground that Section 3116 of Title 26 U. S. C. A., upon which the indictment is based is preventative and remedial rather than criminal, and that therefore the indictment fails to charge an offense against the laws of the United States.

The contention of the defendant seems to be sustained by the federal appellate courts. In the case of *Kent v. U. S.* (Fifth Cir.), 157 F. 2d 1, the Court said:

"The seizure for forfeiture here is not in consequence of or in punishment for a crime, but to prevent one. The proceed-

ing is preventative and remedial, rather than punitive or criminal."

On a motion for rehearing in the above case, wherein it was urged that the proceeding for forfeiture should be treated as a criminal case on the ground that the opinion in the case of *Boyd v. U. S.*, 116 U. S. 616, required the forfeiture to be so treated, the Court said:

"We do not think so. In Boyd's case a criminal offense was directly involved and must have been committed to cause the forfeiture . . .

"In this case no crime was committed."

The above holding is construed as a holding by the Court of Appeals for this Circuit that Section 3116 of Title 26, U. S. C. A., does not define a criminal offense. See also, *Anderson v. U. S.* (Fifth Circuit), 158 F. 2d 196; *U. S. v. One Plymouth Coupe*, 88 F. Supp. 93. Since the question was not raised in that case, the case of *Goddette v. U. S.*, 199 F. 2d 331, is not authority to the contrary.

This Court being of the opinion that Section 3116 of Title 26, U. S. C. A., is preventative and remedial rather than criminal, and that it does not define a criminal offense, it is

ORDERED that the motion of the defendant to dismiss the indictment, and the same is hereby, granted, and said indictment is hereby dismissed.

This the 21st day of October, 1953.

(S.) BOYD SLOAN,  
*United States District Judge.*

#### In United States District Court

#### NOTICE OF APPEAL—Filed November 19, 1953

The United States hereby appeals to the Supreme Court of the United States from the order of the United States District Court for the Northern District of Georgia, entered October 21, 1953, dismissing the indictment in the above-entitled case.

(S.) ROBERT L. STERN,  
*Acting Solicitor General,*  
*Department of Justice,*  
*Washington, D. C.*

Dated: 19 November 1953.

Notification to Appellee under Rule 12 (Omitted in printing)

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## In United States District Court

## DOCKET ENTRIES

- Sep. 9, 1953. Indictment filed and entered.  
Sep. 14, 1953. Filing 1 Commissioner's paper.  
Oct. 5, 1953. Plea guilty entered; sentence deferred.  
Oct. 5, 1953. Filing reporter's stenotype notes on 10-5-53.  
Oct. 21, 1953. Motion of defendant to withdraw plea of guilty & order allowing same.  
Oct. 21, 1953. Verbal motion of defendant's counsel to dismiss indictment.  
Oct. 21, 1953. Order of dismissal filed. (2 copies mailed counsel.)  
Oct. 21, 1953. Filing reporter's stenotype notes on 10/21/53.  
Nov. 19, 1953. Notice of appeal and statement of jurisdiction filed by United States. Copy mailed attorney for defendant.  
Nov. 25, 1953. Designation of record on appeal, filed.  
Dec. 2, 1953. Amended designation of record, filed.  
Dec. 2, 1953. Acknowledgment of service in re Notice of Appeal and Statement as to Jurisdiction.

Attest:

F. L. BEERS,  
*Clerk,*

(S.) By R. C. McCLURE,  
*Deputy Clerk.*

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## In United States District Court

## DESIGNATION OF CONTENTS OF THE RECORD ON APPEAL—Filed November 25, 1953

The United States of America hereby designates as being material to an understanding of the questions on appeal the following contents of the record on appeal in the above entitled case:

1. The Indictment.
- \* 2. Motion to Dismiss.
3. Opinion of the District Court and Order Dismissing the Indictment.
4. All docket entries.
5. Notice of Appeal.
6. Statement as to jurisdiction.
7. Notification to appellee with acknowledgment of service thereon from counsel for appellee and filing entries thereon.

8. This Designation of Record, together with filing entries and certificate of counsel as to service on appellee.

This the 25th day of November, 1953.

(S.) JAMES W. DORSEY,  
*United States Attorney,*

(S.) J. ELLIS MUNDY,  
*Assistant United States Attorney,*  
*Counsel for Appellant,*

*By authority of the Attorney General and  
the Acting Solicitor General of the United  
States.*

\* Note: Item No. 2 was a verbal motion—see docket entries.

8 Certificate of Service (omitted in printing).

9 In United States District Court

AMENDED DESIGNATION OF CONTENTS OF THE RECORD ON APPEAL—  
Filed December 2, 1953

The United States of America hereby amends its Designation of Contents of Record heretofore filed by adding to the designation number 2 the following:

“and reporter’s transcript of hearing on said motion”,

which is hereby designated to likewise become a part of the record on appeal.

This 2nd day of December, 1953.

(S.) JAMES W. DORSEY,  
*United States Attorney,*

(S.) J. ELLIS MUNDY,  
*Assistant United States Attorney,*  
*Counsel for Appellant,*

*By authority of the Attorney General and  
the Acting Solicitor General of the United  
States.*

Certificate of Service (omitted in printing).

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In United States District Court

FURTHER AMENDED DESIGNATION OF CONTENTS OF THE RECORD ON  
APPEAL—Filed December 4, 1953

The United States of America hereby further amends its Designation of Contents of Record on Appeal heretofore filed by striking the Amended Designation of Contents of the Record in its entirety, which amended designation designated the reporter's transcript of the hearing on said motion, it now appearing that the said reporter's transcript is not pertinent to an understanding of the record in this case; so that the only contents of the record designated as pertinent on this appeal are the parts designated in the original Designation of Record first filed.

This the 4th day of December, 1953.

(S.) JAMES W. DORSEY,  
*United States Attorney,*

(S.) J. ELLIS MUNDY,  
*Assistant United States Attorney,  
Counsel for Appellant,*

*By authority of the Attorney General and  
the Acting Solicitor General of the United  
States.*

11-12 Judge's and Clerk's Certificate (omitted in printing).

13 In the Supreme Court of the United States, October Term,  
1953

No. 500

UNITED STATES OF AMERICA, APPELLANT

v.

FLOYD DIXON

STATEMENT OF POINTS TO BE RELIED UPON AND DESIGNATION OF  
RECORD—Filed January 6, 1954

Pursuant to Rule 13, Paragraph 9, of this Court, appellant states that it intends to rely upon the following points:

1. The District Court erred in holding that 26 U.S.C. 3116 is merely preventative and remedial and therefore fails to define a criminal offense.

2. The District Court erred in dismissing the indictment.

Appellant deems the entire record, as filed in the above-entitled case, necessary for the consideration of the points relied upon.

ROBERT L. STERN,  
*Acting Solicitor General.*

January 6, 1954.

14-15 [File endorsement omitted.]

16 Supreme Court of the United States

16 Supreme Court of the United States, October Term, 1953

No. 500

[Title omitted]

ORDER NOTING PROBABLE JURISDICTION—January 11, 1954

Appeal from the United States District Court for the Northern  
District of Georgia

The statement of jurisdiction in this case having been submitted and considered by the Court, probable jurisdiction is noted and the case is transferred to the summary docket.